In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 314

LEON ADJMI and JOSEPH ADJMI, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on June 10, 1965. The petition for a writ of certiorari was filed on July 1, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the trial court's preliminary statement to all the jurors admonishing them not to expose themselves to news reports about the trial and warning that jurors who disregard the court's instructions may be subject to punishment prevented a fair poll of the jury when newspaper articles about the case actually appeared during the trial.

STATEMENT

Petitioners were convicted by a jury in the United States District Court for the Middle District of Florida on all counts of a four count indictment charging mail fraud and conspiracy in violation of 18 U.S.C. 1341 and 371 (R. I, 8-13, 79-82, 87-90; R. II, 622-626).[1] Both petitioners were sentenced to imprisonment for a period of ten years (R. I, 99-102).[2]

1. The evidence at trial may be summarized as follows:

On March 21, 1958, a fire occurred on the premises of the J. & C.A. Corporation[3] in Miami, Florida

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[1] Co-defendant Charles Adjmi was acquitted on all four counts (R. I, 83-86, 91). The J. & C.A. Corporation, also a co-defendant, was convicted on the three substantive counts (R. I, 76-78).

[2] Five year concurrent sentences on counts one and two to run consecutively with five year concurrent sentences on counts three and four.

[3] The corporation was owned by Joseph and Charles Adjmi (R. I, 136, 188). Leon Adjmi had loaned money to the corporation and was active in its affairs.

(R. I, 147-148, 159, 187). Shortly before the fire, petitioner Joseph Adjmi had increased the corporation's insurance policies to $250,000 worth of fire protection (R. I, 145-147). An inventory of merchandise was made and invoices were submitted by petitioner Joseph Adjmi to verify the cost of goods purportedly damaged or destroyed in the fire (R. I, 159-166, 168, 195, 259-264).[4] The claims to the insurance companies included an $84,000 fictitious sale-of-goods invoice by petitioner Leon Adjmi to the J. & C.A. Corporation, a transfer which was not reflected in the corporate books or in the records of Leon Adjmi and was completely disregarded by Leon Adjmi for income tax purposes (R. II, 352-357, 359-360, 371). Other proofs of loss submitted to the insurance companies included a fictitious invoice prepared after the fire at petitioner Leon Adjmi's request which showed a sale of goods for $16,915 before the fire (R. I, 198, 285, 316-319). Another seller gave the Adjmis an invoice reflecting a sale of about $25,000 worth of merchandise which, in fact, was neither shipped nor paid for, although the invoice was submitted to the insurance companies to establish the cost of the goods contained therein (R. II, 472-491). Many other items listed in invoices used to verify costs were overvalued by many times their

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[4] The total value of merchandise and fixtures on the premises was fixed at $313,598.79 (R. I, 177). The total fire loss claimed was $238,438.54 (R. I, 206). The merchandise, represented as costing $266,403.72, allegedly sustained damage amounting to $197,041.06 (R. I, 168). Claims were eventually settled by the insurance companies for about $194,000 (R. I, 167-168, 172).

actual cost (R. I, 319-326; R. II, 392-395, 402-414). Proofs of loss were transmitted to the insurance companies through the mails (R. I, 200-203, 217-219).

2. Before the jury was selected, the court instructed all of the prospective jurors generally on the function of the indictment, the presumption of innocence, the burden of proof and the necessity of considering only evidence presented at trial (Supp. R. 5-10). During the course of this discussion, the court stated that (Supp. R. 6-7):

> It sometimes happens that newspapers, television and radio stations have information about the case which has not been presented in open court and which would not be admissible, if presented. The defendants in this case have the absolute right to have their guilt or innocence determined by you upon evidence presented in open court.
>
> In order that you may not be influenced in your deliberations by anything not presented in open court you are directed not to read any newspaper accounts pertaining to the trial, or listen to television or radio broadcasts pertaining to the trial or to allow any person to discuss such accounts with you. Jurors are held to regard the instructions and admonitions given by the Court in connection with the case. The failure of a juror to observe such instructions and admonitions and requests may be subject to punishment by the Court. During my twenty-five years service in the trial courts I have never had to punish a juror for misconduct. There is no reason to anticipate any reason to do so in this case.

Later the court inquired of the jury (Supp. R. 10):

> Is there any member of the panel who feels that they cannot go into this jury box with an open mind, a receptive mind, ready to listen to and be guided solely by the evidence and the instructions of the Court? Is there any member of the panel who feels they cannot go into the trial of this lawsuit and be guided solely by the evidence and the instructions and not as to anything they have heard about the case?
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> The record may show that as to the last two questions nobody raised their hands.

During the trial, counsel brought to the court's attention certain newspaper articles published in local papers [5] and the court made the following examination of the jury (R. II, 456-457):

> THE COURT: Ladies and gentlemen of the jury, may I have your attention? I want to ask you a question. Have any of you since the commencement of this trial read any of the newspaper accounts about the trial?
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> A JUROR: I saw only the headlines and did not read the articles.
>
> ANOTHER JUROR: I saw that.

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[5] One article appeared on page 6-A of The Tampa Times under the headline "Mail Fraud, Conspiracy Charges, Crying Adjmis Defense Near" (R. II, 444-448). The other article appeared on page 8-A of two successive editions of The Tampa Tribune under the headline "Fake Papers Cited in Adjmi Case" (R. II, 449). Petitioners' main objection was that both articles stated that all three Adjmis had recently been convicted on similar charges. The prior conviction noted was affirmed by the court of appeals, 343 F. 2d 164, and is presently pending before this Court. No. 215, O.T. 1965.

ANOTHER JUROR: I read it a second and then I quit.

THE COURT: You quit reading the moment you saw it related to the trial.

THE JUROR: Absolutely.

THE COURT: And nothing about that would affect you in any way. I think that answers what I wanted to know. I say again, we have a free press and we also have the right of fair trial and sometimes it is hard to keep the lines clear. But the defendants have a right to have their guilt or innocence passed upon without any newspaper accounts.

Defense counsel did not object that the inquiry had been inadequate. In the final instructions to the jury prior to deliberation, the court again admonished the jury as follows (R. II, 614-615):

(d) In connection with these instructions and in connection with all phases of the case you will consider such matters only as are shown by the evidence presented in open court; and you should consider such issues as are submitted to you by these instructions and no others.

(e) If any juror should happen to know any fact or facts bearing upon this case, either directly or indirectly, which fact or facts were not produced from the evidence admitted in the case, or by reasonable deduction therefrom, he or she should not communicate such to his or her fellow jurors not let the same have any weight in his or her consideration of the case. The law requires that you discuss and rely alone for your verdicts herein upon the evidence produced in this case.

ARGUMENT

There is no merit in petitioners' contention that the trial court "threat[ened to] punish" jurors who disregarded the court's instruction not to expose themselves to news reports of the trial and that this "threat" prevented a fair polling of the jury about newspaper articles appearing in local publications during the trial (Pet. 7-8). As set forth in the Statement, the record shows that the trial court was well aware of the problem of publicity concerning this case from the beginning to the end of the trial. Consistent with established practice, the court adopted the preventive measure of admonishing the jury not to read newspaper accounts of the trial and warned of the court's power to punish those who disregard the instructions of the court. When newspaper articles about the trial were called to the court's attention, the jurors were asked about them. This examination demonstrated that the court's previous admonition had accomplished its deterrent purpose in that, of the three jurors who saw the newspaper accounts, two of them read no further than the headlines and the third read only for "a second" until he became aware that the material related to the trial. The arrangement and content of the newspaper articles and the jurors' answers to questioning by the court were sufficient basis to conclude that these jurors did not read anything prejudicial.[6] Defense counsel apparently felt

[6] Petitioners' assume that the news accounts were prejudicial (Pet. 7), as did the court of appeals (Pet. App. A, p. 14). We submit that, while the jury should not be exposed

the inquiry was adequate at the time, for they failed to object to it. Under the circumstances, there was no reason to grant the motion for a mistrial. See *United States* v. *Carlucci*, 288 F. 2d 691 (C.A. 3), certiorari denied, 366 U.S. 961.

Petitioners' further assertion that any inquiry would have been inadequate as a matter of law since, human nature being what it is, the so-called "threat of punishment" instruction would cause jurors to remain silent in the face of the court's inquiry is speculative in theory and without foundation in fact. Indeed, in this instance three jurors candidly told the court what they had seen. There is no reason to suspect that the rest of the jury disregarded its duty to respond to the court's inquiry.[7] *Irvin* v. *Dowd*, 366 U.S. 717, 722-723. *Rizzo* v. *United States*, 304 F. 2d 810, 814-816 (C.A. 8), certiorari denied *sub nom. Nafie* v. *United States*, 371 U.S. 890 and cases cited.

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to any out-of-trial information on the case, these two articles could hardly be considered of the kind which would justify a mistrial where the court has repeatedly instructed the jury that the case is to be decided solely upon the evidence presented at trial—except, perhaps, where a juror affirmatively declares that his judgment has been influenced.

[7] The results of the trial support the conclusion that the jury followed its strict instructions to decide the issues solely upon the evidence at trial. The evidence as to Charles Adjmi was weak. The evidence as to petitioners' guilt was uncontested and overwhelming. Notwithstanding the fact that the two news accounts of the trial failed to distinguish between the three defendants and stated that all three Adjmis had been previously convicted on similar charges, the jury acquitted Charles Adjmi.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.[8]

ARCHIBALD COX,
Solicitor General.

FRED M. VINSON, JR.,
Assistant Attorney General.

BEATRICE ROSENBERG,
PAUL C. SUMMITT,
Attorneys.

JULY 1965

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[8] Since this brief in opposition was prepared, petitioners have filed a "Memorandum Suggesting That A Question of Mootness Exists" in Nos. 215 and 314, this Term. The facts referred to in that memorandum—that petitioners have violated the condition of their bonds and disappeared—do in fact seem to make this Court's decision in *Eisler* v. *United States*, 338 U.S. 189, applicable to both No. 215 and No. 314. Accordingly, the petitions may be dropped from the docket until petitioners reappear. We are submitting this brief in opposition for use when and if the petitions are restored to the docket.

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